

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 17-cr-20007-1

Hon. Matthew F. Leitman

v.

MARLIN BREWER,

Defendant.

/

**ORDER TO CLARIFY EXHAUSTION STATUS**

Defendant Marlin Brewer is currently incarcerated at USP Hazelton. On May 27, 2020, Brewer filed a Motion for Early Release. (*See* Mot., ECF No. 123.) Brewer's motion appears to request compassionate release under 18 U.S.C. § 3582(c)(1)(A). (*See id.*, PageID.479–483.)

Under Section 3582(c)(1)(A), a defendant may not file a motion for compassionate release until “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” The exhaustion requirement in Section 3582(c)(1)(A) is “mandatory” and is not subject to any “judge-made exceptions.” *United States v. Alam*, --- F.3d ---, 2020 WL 2845694, at \*2–4 (6th Cir. June 2, 2020).

It does not appear that Brewer has satisfied this exhaustion requirement, but he has not given the Court enough information to determine whether he has done so. Therefore, the Court hereby **DIRECTS** Brewer to file a supplement to his request that informs the Court whether he has submitted a written request for compassionate release to the warden at USP Hazelton. If Brewer has submitted a written request for compassionate release to the warden at USP Hazelton, then Brewer shall also inform the Court of the date on which he submitted the request, whether the warden responded to the request, and the date of the warden's response (if any).

If Brewer has not submitted a request for compassionate release to the warden, then the Court will dismiss his current filing (ECF No. 123) without prejudice. In that event, Brewer would be permitted to refile a motion seeking compassionate release upon exhausting his remedies.

The Court advises Brewer that – if he has not already done so – he should submit a request for compassionate release to the warden at USP Hazelton if he wishes to file a later motion for compassionate release in this Court. Submitting a request to the warden is the first step in the process of seeking compassionate release, and making the request will permit Brewer (after he has either exhausted his administrative remedies or waited 30 days after the warden received his request) to file a motion for compassionate release in this Court.

If, however, Brewer is requesting release under some other authority besides 18 U.S.C. § 3582(c)(1)(A), then he should inform the Court of the statutory authority under which he is seeking relief, and the Court will proceed accordingly.

**IT IS SO ORDERED.**

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: June 26, 2020

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 26, 2020, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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